

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.12952 OF 1993

WITH

SPECIAL CIVIL APPLICATION NO.339 OF 1995

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed
to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy
of the judgment ?
 4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950, or any order made
thereunder ?
 5. Whether it is to be circulated to the Civil
Judge?

MEHSANA DISTRICT CENTRAL CO-OP. BANK LTD.
VERSUS
THE STATE OF GUJARAT AND ORS.

Appearance:

(In both Special Civil Applications)
Shri K.G. Vakharia for the petitioner.
Shri H.L. Jani for the respondents.

Coram: S.K. Keshote, J
Date of decision: 13.12.96

C.A.V. JUDGMENT

Heard learned counsel for the parties. Though the learned counsel for the petitioner in these cases has mentioned many provisions of the Banking Regulations Act, 1949 as well as of the Gujarat Co-operative Societies Act, 1962, (hereinafter referred to as the Act 1949 and Act 1962 respectively) and the Rules framed thereunder, and many other facts of the case, but I do not consider it appropriate to go into the depth to the extent as suggested by the learned counsel for the petitioner as the respondents have only given notice to the petitioner to show cause and the petitioner has sufficient opportunity to raise all the objections which have been raised by it in these Special Civil Applications, while giving reply to the show cause notice. Secondly, the petitioner has also approached to the concerned Hon'ble Minister of the Department with a prayer for relaxation in the matter of deposit of surplus fund in the Bank of the petitioner, to the specified Banks u/s.71 of the Act 1962, which is still pending and has not been decided.

2. The petitioner is a Co-operative society registered under the provisions of the Act 1962. It is not in dispute that the petitioner is a Central Co-operative Bank in the Mehsana district as contemplated under the provisions of Section 2(b) of the National Bank for Agriculture and Rural Development Act, 1981, as well as the Co-operative Bank as contemplated u/s.56 read with Section 5(cc)(1) of the Banking Regulations Act, 1949. Section 71 of the State Act provides how the surplus fund has to be invested by a Society. A society may invest or deposit its funds in a Central Bank or a State Co-operative Bank, in the State Bank of India, in the Postal Savings Bank and in some other securities as specified under other clauses of the said Section.

3. The petitioner's counsel contended that the petitioner-Bank faced manifold difficulties and inconveniences where it has deposited the surplus fund with the Central Bank or the State Bank of India. When necessity has arisen for money to be taken from those Banks, the amount is not made available which has resulted in disrepute of the Bank. The Bank has filed many complaints in this respect before the Consumers Redressal Commission of the State of Gujarat. It has next been contended that the deposit to the investment of surplus fund or deposit thereof in the specified Bank u/s.71 of the said Act results in lesser receipt of benefits as the rate of interest on deposits or investments varies from time to time and the same is much less than what it would have been in case of investment

of the surplus fund or deposit thereof made in other institutions referred in these Special Civil Applications. Lastly the learned counsel for the petitioner contended that the investment of surplus fund and deposit thereof has been made by the petitioner with the institutions which are substantially under the control of the State Government or Central Government.

4. But as stated earlier, no final order has been made or any final action has been taken in the matter against the petitioner. As stated earlier, the respondent has given only a notice to the petitioner dated 1.11.93 in the Special Civil Application No.12952 of 1983 and dated 26.12.94 in Special Civil Application No.339 of 1995. The petitioner itself has accepted in the writ petitions that these are show cause notices. In para-13 of the first Special Civil Application, the petitioner has come up with the case that it has received notice dated 1st November 1993 from the respondent No.3 whereby the petitioner Bank has been called upon to show cause as to why it should not be prosecuted u/s.147 of the State Act. Same averment has been made in the second Special Civil Application in para-14 thereof. The petitioner, under the aforesaid show cause notices, was called upon to show cause why it should not be prosecuted u/s.147 of the State Act. Section 147 of the State Act provided for punishment for violation of provisions of Section 71 of the said Act. But that stage has not been reached. The petitioner, instead of filing a detailed reply to the show cause notice and taking decisions in the aforesaid matters, has approached this Court. This haste in approaching this Court against the Show Cause Notices is difficult to appreciate. It is not the case where prosecution has been launched against the petitioner but only it has been called upon to show cause why it should not be launched. The contention of the learned counsel for the petitioner is that the provisions of Section 71 of the State Act are not applicable to the Central Co-operative Bank but this point could have been raised before the said authority also. The petitioner could have convinced the said authority in case it has a case that the provisions of the said Section are not applicable to the case of petitioner. If the authorities ultimately decided against the petitioner, then it has sufficient remedy under the State Act itself and in any case to approach this Court. But the writ petitions against the show cause notices are not maintainable directly before this Court. If any reference is required in this respect, then a reference may have to the decision of Apex Court in the case of Executive Engineer, Bihar State Housing Board v. Rameshkumar Singh & Ors.,

reported in 1996(1) SCC 327. In the present case the petitioner has not challenged the validity of the provisions of Section 71 of the State Act in any of these Special Civil Applications. The petitioner had sought declaration from this Court that the provisions of Section 71 of the Gujarat Co-operative Societies Act 1961 are not applicable to the petitioner. It is a matter to be taken first before the authority concerned and that authority was competent to decide whether the provisions of Section 71 of the said Act are applicable to the petitioner or not. That remedy was available, but the petitioner has circumvented that remedy and has chosen to file these petitions before this Court. It is not the case of the petitioner that the respondent No.3 has no jurisdiction or authority to issue show cause notices which are issued in the present case. It is a case where it is contended by the petitioner that the provisions of Section 71 of the Act 1961 are not applicable to the petitioner. The question is of applicability of the provisions of Section 71 of the Act 1962 to the petitioner and it could have been decided by the authority concerned itself. Only in case the Court decides that the provisions of Section 71 of the Act 1961 are not applicable to the case of the petitioner then the show cause notices issued by the respondent No.3 to it may vitiate. But that does not mean that the authority has acted without jurisdiction or without authority of law in the present case. It is true that against the show cause notice the petition may be maintainable but only in case of exceptional character and nature, i.e. where the authority which issued the show cause notice has totally lacked jurisdiction or competence to issue the same, which is not the case here. The net result of the aforesaid discussion is that these Special Civil Applications against the show cause notices are not maintainable in view of the decision of Supreme Court in the case of Executive Engineer, Bihar State Housing Board v. Rameshkumar Singh & Ors.(supra).

5. The another issue which calls for consideration of this Court is the action of the Hon'ble Minister of the concerned Department to sit over the representation which has been made by the petitioner under the caption, "To issue general or special order permitting the investment of deposit and advances of the funds of the applicant-Bank under Section-71(1)(g) of the Gujarat Co-op. Societies Act 1961". A detailed representation has been made by the Bank to the concerned Hon'ble Minister and a copy of the same has also been sent to (i) the Secretary, Agriculture Co-operative & rural Development Department, (ii) Registrar, Co-operative

Societies, and (iii) Chairman, Gujarat State Co-operative Bank Ltd. This representation made by the Bank should have been considered and proper order should have been passed. The petitioner is a registered Co-operative society under the relevant provisions of the said Act and is a Central Co-operative Bank in the district of Mehsana. When the representation has been made than it should have been decided after considering all aspects of the matter and after hearing the petitioner's representative. The Bank may have some difficulties to carry out the mandate as contained in Section 71 of the Act 1961 and it may feel that the investment of surplus fund and the deposits thereof with the specified institutions under the said provisions may not be profitable. These are the issues on which the matter has to be considered by the Hon'ble Minister or the concerned officer objectively. The Hon'ble Minister as well as the other concerned officer should have made an endeavour to see that the Bank runs and it does not come under liquidation or it may not suffer losses, which otherwise could be avoided. These are matters to be considered by the authorities and not by this Court. These are the grievance and the issues of the nature which have to be resolved out by sitting together around the table.

6. In the result, these writ petitions are disposed of in terms that the petitioner may make its detailed reply to the show cause notices given to it which are impugned in these petitioners, within a period of two months from the date of receipt of certified copy of this order. On such replies being made by the petitioner, the respondent No.3 shall decide the grievances made by the petitioner therein including the issue whether the provisions of Section 71 of the said Act are applicable to the petitioner or not, within three months from the date of receipt of said representation. In case, the respondent No.3 decides the matter against the petitioner, then a reasoned order has to be passed and a copy of the same may be sent to the petitioner by a registered post. The respondent No.1 is directed to dispose of the application of the petitioner, addressed to the Hon'ble Minister of the Department, dated 3rd September 1993, within a period of three months from the date of receipt of certified copy of this order. The application may be decided after giving an opportunity of hearing to the petitioner. In case the prayer made by the petitioner in the said application is not accepted, then a reasoned order may be passed and a copy of the same may be sent to the petitioner by a registered post. It is further ordered that till the respondent No.3 decides the matter in respect of which the petitioner has

been called upon to show cause, it shall not launch any prosecution against the petitioner. The Rule stands disposed of in aforesaid terms in both the Special Civil Applications with no order as to costs.

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(sunil)